

Assembly Bill No. 198

CHAPTER 437

An act to amend Sections 160, 168, 174.5, 175, 181, 1001, 1100, 1101, 1101.1, 1109, 1113, 1200, 1201, 6010, 6020, 6021, 6022, 8010, 8020, 8021, 8022, 9640, 12530, 12550, 12551, 12552, 15679.1, 16901, 16911, 16914, 16915, 16916, and 17600 of, and to add Sections 5063.5, 5064.5, 6019.1, 8019.1, 12242.5, 12242.6, and 12540.1 to, the Corporations Code, relating to legal entities.

[Approved by Governor September 21, 1999. Filed
with Secretary of State September 21, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 198, Ackerman. Legal entities: organization and operation.

Existing provisions of law provide for the merger of 2 or more corporations.

This bill would authorize corporations, including nonprofit corporations and cooperative corporations to merge directly with any other business entity defined to mean a domestic or foreign limited liability company, limited partnership, general partnership, business trust, real estate investment trust, unincorporated association, other than a nonprofit association, or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance. The bill would revise and recast other provisions, would enact related provisions with respect to merger authority that are applicable to partnerships, limited partnerships, and limited liability companies, and would make various technical and other related changes.

This bill would incorporate additional changes to Sections 15679.1 and 17600 of the Corporations Code proposed by AB 197, to be operative only if this bill and AB 197 are both enacted and become effective on or before January 1, 2000, and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 160 of the Corporations Code is amended to read:

160. (a) Except as provided in subdivision (b), "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation.

(b) "Control" in Sections 181, 1001, and 1200 means the ownership directly or indirectly of shares or equity securities possessing more than 50 percent of the voting power of a domestic corporation, a foreign corporation, or an other business entity.

SEC. 2. Section 168 of the Corporations Code is amended to read:

168. “Equity security” in Sections 181, 1001, 1113, 1200, and 1201 means any share or membership of a domestic or foreign corporation; any partnership interest, membership interest, or equivalent equity interest in an other business entity; and any security convertible with or without consideration into, or any warrant or right to subscribe to or purchase, any of the foregoing.

SEC. 3. Section 174.5 of the Corporations Code is amended to read:

174.5. “Other business entity” means a domestic or foreign limited liability company, limited partnership, general partnership, business trust, real estate investment trust, unincorporated association (other than a nonprofit association), or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance as set forth in Article 16 (commencing with Section 1550) of Chapter 3 of Part 2 of Division 1 of the Insurance Code. As used herein, “general partnership” means a “partnership” as defined in subdivision (7) of Section 16101; “business trust” means a business organization formed as a trust; “real estate investment trust” means a “real estate investment trust” as defined in subsection (a) of Section 856 of the Internal Revenue Code of 1986, as amended; and “unincorporated association” has the meaning set forth in Section 24000.

SEC. 4. Section 175 of the Corporations Code is amended to read:

175. Except as used in Sections 1001, 1101, and 1113, a “parent” of a specified corporation is an affiliate in control (Section 160(a)) of that corporation directly or indirectly through one or more intermediaries. In Sections 1001, 1101, and 1113, “parent” means a person in control (Section 160(b)) of a domestic corporation, a foreign corporation, or an other business entity.

SEC. 5. Section 181 of the Corporations Code is amended to read:

181. “Reorganization” means either:

(a) A merger pursuant to Chapter 11 (commencing with Section 1100) other than a short-form merger (a “merger reorganization”).

(b) The acquisition by one domestic corporation, foreign corporation, or other business entity in exchange, in whole or in part, for its equity securities (or the equity securities of a domestic corporation, a foreign corporation, or an other business entity which is in control of the acquiring entity) of equity securities of another domestic corporation, foreign corporation, or other business entity if, immediately after the acquisition, the acquiring entity has control of the other entity (an “exchange reorganization”).

(c) The acquisition by one domestic corporation, foreign corporation, or other business entity in exchange in whole or in part for its equity securities (or the equity securities of a domestic corporation, a foreign corporation, or an other business entity which is in control of the acquiring entity) or for its debt securities (or debt

securities of a domestic corporation, foreign corporation, or other business entity which is in control of the acquiring entity) which are not adequately secured and which have a maturity date in excess of five years after the consummation of the reorganization, or both, of all or substantially all of the assets of another domestic corporation, foreign corporation, or other business entity (a “sale-of-assets reorganization”).

SEC. 6. Section 1001 of the Corporations Code is amended to read:

1001. (a) A corporation may sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its assets when the principal terms are approved by the board, and, unless the transaction is in the usual and regular course of its business, approved by the outstanding shares (Section 152), either before or after approval by the board and before or after the transaction.

A transaction constituting a reorganization (Section 181) is subject to the provisions of Chapter 12 (commencing with Section 1200) and not this section (other than subdivision (d)).

(b) Notwithstanding approval of the outstanding shares (Section 152), the board may abandon the proposed transaction without further action by the shareholders, subject to the contractual rights, if any, of third parties.

(c) The sale, lease, conveyance, exchange, transfer or other disposition may be made upon those terms and conditions and for that consideration as the board may deem in the best interests of the corporation. The consideration may be money, securities, or other property.

(d) If the acquiring party in a transaction pursuant to subdivision (a) of this section or subdivision (g) of Section 2001 is in control of or under common control with the disposing corporation, the principal terms of the sale must be approved by at least 90 percent of the voting power of the disposing corporation unless the disposition is to a domestic or foreign corporation or other business entity in consideration of the nonredeemable common shares or nonredeemable equity securities of the acquiring party or its parent.

(e) Subdivision (d) does not apply to any transaction if the Commissioner of Corporations, the Commissioner of Financial Institutions, the Insurance Commissioner or the Public Utilities Commission has approved the terms and conditions of the transaction and the fairness of those terms and conditions pursuant to Section 25142, Section 696.5 of the Financial Code, Section 838.5 of the Insurance Code, or Section 822 of the Public Utilities Code.

SEC. 7. Section 1100 of the Corporations Code is amended to read:

1100. Any two or more corporations may be merged into one of those corporations. A corporation may merge with one or more domestic corporations (Section 167), foreign corporations (Section



171), or other business entities (Section 174.5) pursuant to this chapter. Mergers in which a foreign corporation but no other business entity is a constituent party are governed by Section 1108, and mergers in which an other business entity is a constituent party are governed by Section 1113.

SEC. 8. Section 1101 of the Corporations Code is amended to read:

1101. The board of each corporation which desires to merge shall approve an agreement of merger. The constituent corporations shall be parties to the agreement of merger and other persons, including a parent party (Section 1200), may be parties to the agreement of merger. The agreement shall state all of the following:

(a) The terms and conditions of the merger.

(b) The amendments, subject to Sections 900 and 907, to the articles of the surviving corporation to be effected by the merger, if any. If any amendment changes the name of the surviving corporation the new name may be the same as or similar to the name of a disappearing domestic or foreign corporation, subject to subdivision (b) of Section 201.

(c) The name and place of incorporation of each constituent corporation and which of the constituent corporations is the surviving corporation.

(d) The manner of converting the shares of each of the constituent corporations into shares or other securities of the surviving corporation and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving corporation, the cash, rights, securities, or other property which the holders of those shares are to receive in exchange for the shares, which cash, rights, securities, or other property may be in addition to or in lieu of shares or other securities of the surviving corporation, or that the shares are canceled without consideration.

(e) Other details or provisions as are desired, if any, including, without limitation, a provision for the payment of cash in lieu of fractional shares or for any other arrangement with respect thereto consistent with the provisions of Section 407.

Each share of the same class or series of any constituent corporation (other than the cancellation of shares held by a constituent corporation or its parent or a wholly owned subsidiary of either in another constituent corporation) shall, unless all shareholders of the class or series consent and except as provided in Section 407, be treated equally with respect to any distribution of cash, rights, securities, or other property. Notwithstanding subdivision (d), except in a short-form merger, and in the merger of a corporation into its subsidiary in which it owns at least 90 percent of the outstanding shares of each class, the nonredeemable common shares or nonredeemable equity securities of a constituent corporation may be converted only into nonredeemable common shares of the



surviving party or a parent party if a constituent corporation or its parent owns, directly or indirectly, prior to the merger shares of another constituent corporation representing more than 50 percent of the voting power of the other constituent corporation prior to the merger, unless all of the shareholders of the class consent and except as provided in Section 407.

SEC. 9. Section 1101.1 of the Corporations Code is amended to read:

1101.1. Subdivision (c) of Section 1113 and the last two sentences of Section 1101 do not apply to any transaction if the Commissioner of Corporations, the Commissioner of Financial Institutions, the Insurance Commissioner or, the Public Utilities Commission has approved the terms and conditions of the transaction and the fairness of those terms and conditions pursuant to Section 25142 or Section 696.5, 5750, or 5802 of the Financial Code, Section 838.5 of the Insurance Code, or Section 822 of the Public Utilities Code.

SEC. 9.5. Section 1109 of the Corporations Code is amended to read:

1109. Whenever a domestic or foreign corporation or domestic or foreign other business entity having any real property in this state merges or consolidates with another domestic or foreign corporation or other business entity pursuant to the laws of this state or of the state or place in which any constituent party to the merger was incorporated or organized, and the laws of the state or place of incorporation or organization (including this state) of any disappearing party to the merger provide substantially that the making and filing of the agreement of merger or consolidation or certificate of ownership or certificate of merger vests in the surviving or consolidated party to the merger all the real property of any disappearing party to the merger, the filing for record in the office of the county recorder of any county in this state in which any of the real property of that disappearing party to the merger is located of a copy of the agreement of merger or consolidation or certificate of ownership or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger or consolidation is effected, shall evidence record ownership in the surviving or consolidated party to the merger, of all interest of the disappearing party to the merger in and to the real property located in that county.

SEC. 10. Section 1113 of the Corporations Code is amended to read:

1113. (a) Any one or more corporations may merge with one or more other business entities (Section 174.5). One or more domestic corporations (Section 167) not organized under this division and one or more foreign corporations (Section 171) may be parties to the merger. Notwithstanding the provisions of this section, the merger



of any number of corporations with any number of other business entities may be effected only if:

(1) In a merger in which a domestic corporation not organized under this division or a domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve, and shall be a party to, an agreement of merger. Other persons, including a parent party (Section 1200), may be parties to the agreement of merger. The board of each corporation which desires to merge, and, if required the shareholders, shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each party by those persons required to approve the merger by the laws under which it is organized. The agreement of merger shall state:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party to the merger and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 900 and 907, to the articles of the surviving corporation, if applicable, to be effected by the merger. If any amendment changes the name of the surviving corporation, if applicable, the new name may be, subject to subdivision (b) of Section 201, the same as or similar to the name of a disappearing party to the merger.

(4) The manner of converting the shares of each constituent corporation into shares, interests, or other securities of the surviving party. If any shares of any constituent corporation are not to be converted solely into shares, interests or other securities of the surviving party, the agreement of merger shall state (i) the cash, rights, securities, or other property which the holders of those shares are to receive in exchange for the shares, which cash, rights, securities, or other property may be in addition to or in lieu of shares, interests or other securities of the surviving party, or (ii) that the shares are canceled without consideration.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a public benefit corporation or a religious corporation is a party to the merger, Section 6019.1, or, if a mutual benefit corporation is a party to the merger, Section 8019.1, or, if a consumer cooperative corporation is a party to the merger, Section 12540.1, or, if a domestic limited partnership is a party to the merger, Section 15678.2, or, if a domestic



partnership is a party to the merger, Section 16911, or, if a domestic limited liability company is a party to the merger, Section 17551.

(6) Any other details or provisions as are desired, including, without limitation, a provision for the payment of cash in lieu of fractional shares or for any other arrangement with respect thereto consistent with the provisions of Section 407.

(c) Each share of the same class or series of any constituent corporation (other than the cancellation of shares held by a party to the merger or its parent, or a wholly owned subsidiary of either, in another constituent corporation) shall, unless all shareholders of the class or series consent and except as provided in Section 407, be treated equally with respect to any distribution of cash, rights, securities, or other property. Notwithstanding paragraph (4) of subdivision (b), the nonredeemable common shares of a constituent corporation may be converted only into nonredeemable common shares of a surviving corporation or a parent party (Section 1200) or nonredeemable equity securities of a surviving party other than a corporation if another party to the merger or its parent owns, directly or indirectly, prior to the merger shares of that corporation representing more than 50 percent of the voting power of that corporation, unless all of the shareholders of the class consent and except as provided in Section 407.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger or the certificate of merger, as is applicable, if the amendment is approved by the board of each constituent corporation and, if the amendment changes any of the principal terms of the agreement, by the outstanding shares (Section 152), if required by Chapter 12 (commencing with Section 1200), in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, the agreement of merger as so amended shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the outstanding shares (Section 152), at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president or a vice president and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) (1) If the surviving party is a corporation or a foreign corporation, or if a public benefit corporation (Section 5060), a mutual benefit corporation (Section 5059), a religious corporation (Section 5061), or a corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the



merger, after required approvals of the merger by each constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and by the other parties to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class and, if applicable, by such other person or persons whose approval is required, or that the merger agreement was entitled to be and was approved by the board alone (as provided in Section 1201, in the case of corporations subject to that section). If equity securities of a parent party (Section 1200) are to be issued in the merger, the officer's certificate of that controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles or organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth, if a vote of the shareholders,



members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger in the form attached or its principal terms, as required, were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon filing of the agreement of merger with an officer's certificate of each constituent domestic and foreign corporation and a certificate of merger for each constituent other business entity, subject to subdivision (c) of Section 110 and subject to the provisions of subdivision (j), and the several parties thereto shall be one entity. The agreement of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger taxed under the Bank and Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by that law have been paid or secured. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code. The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(2) If the surviving entity is an other business entity, and no public benefit corporation (Section 5060), mutual benefit corporation (Section 5059), religious corporation (Section 5061), or corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the merger, after required approvals of the merger by each constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and by the other parties to the merger, the parties to the merger shall file a certificate of merger in the office of, and on a form



prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each constituent domestic and foreign corporation by its chairperson of the board, president or a vice president and also by its secretary or an assistant secretary and by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact. The certificate of merger shall be signed by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth all of the following:

(A) The name, place of incorporation or organization, and the Secretary of State's file number, if any, of each party to the merger, separately identifying the disappearing parties and the surviving party.

(B) If the approval of the outstanding shares of a constituent corporation was required by Chapter 12 (commencing with Section 1200), a statement setting forth the total number of outstanding shares of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of shares of each class entitled to vote and the percentage vote required of each class.

(C) The future effective date or time, not more than 90 days subsequent to the date of filing of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(D) A statement, by each party to the merger which is a domestic corporation not organized under this division, a foreign corporation, or an other business entity, of the statutory or other basis under which that party is authorized by the laws under which it is organized to effect the merger.



(E) Any other information required to be stated in the certificate of merger by the laws under which each party to the merger is organized, including, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4.

(F) Any other details or provisions that may be desired.

Unless a future effective date or time is provided in a certificate of merger, in which event the merger shall be effective at that future effective date or time, a merger shall be effective upon the filing of the certificate of merger in the office of the Secretary of State and the several parties thereto shall be one entity. The certificate of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger that is taxed under the Bank and Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by the Bank and Corporation Tax Law have been paid or secured. The surviving other business entity shall keep a copy of the agreement of merger at its principal place of business which, for purposes of this subdivision, shall be the office referred to in Section 17057 if a domestic limited liability company, at the business address specified in paragraph (5) of subdivision (a) of Section 17552 if a foreign limited liability company, at the office referred to in subdivision (a) of Section 16403 if a domestic general partnership, at the business address specified in subdivision (f) of Section 16911 if a foreign partnership, at the office referred to in subdivision (a) of Section 15614 if a domestic limited partnership, or at the business address specified in paragraph (5) of subdivision (a) of Section 15678.4 if a foreign limited partnership. Upon the request of a holder of equity securities of a party to the merger, a person with authority to do so on behalf of the surviving other business entity shall promptly deliver to that holder, a copy of the agreement of merger. A waiver by that holder of the rights provided in the foregoing sentence shall be unenforceable. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger in accordance with Section 1555 of the Insurance Code.

(h) (1) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger and the performance of the conditions necessary



to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger.

(2) For all purposes for a merger in which the surviving entity is a domestic other business entity and the filing of a certificate of merger is required by paragraph (2) of subdivision (g), a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of the constituent corporations, either by themselves or together with the other parties to the merger, into the surviving other business entity.

(i) (1) Upon a merger pursuant to this section, the separate existences of the disappearing parties to the merger cease and the surviving party to the merger shall succeed, without other transfer, to all the rights and property of each of the disappearing parties to the merger and shall be subject to all the debts and liabilities of each in the same manner as if the surviving party to the merger had itself incurred them.

(2) All rights of creditors and all liens upon the property of each of the constituent corporations and other parties to the merger shall be preserved unimpaired, provided that those liens upon property of a disappearing party shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(3) Any action or proceeding pending by or against any disappearing corporation or disappearing party to the merger may be prosecuted to judgment, which shall bind the surviving party, or the surviving party may be proceeded against or substituted in its place.

(4) If a limited partnership or a general partnership is a party to the merger, nothing in this section is intended to affect the liability a general partner of a disappearing limited partnership or general partnership may have in connection with the debts and liabilities of the disappearing limited partnership or general partnership existing prior to the time the merger is effective.

(j) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivision (a) and this subdivision.

(2) If the surviving party is a domestic corporation or domestic other business entity, the merger proceedings with respect to that party and any domestic disappearing corporation shall conform to the provisions of this section. If the surviving party is a foreign corporation or foreign other business entity, then, subject to the requirements of subdivision (c), and of Section 407 and Chapter 12 (commencing with Section 1200) and Chapter 13 (commencing with Section 1300), and, if applicable, corresponding provisions of the Nonprofit Corporation Law or the Consumer Cooperative Corporation Law, with respect to any domestic constituent corporations, Chapter 13 (commencing with Section 17600) of Title

2.5 with respect to any domestic constituent limited liability companies, Article 6 (commencing with Section 16601) of Chapter 5 of Title 2 with respect to any domestic constituent general partnerships, and Article 7.6 (commencing with Section 15679.1) of Chapter 3 of Title 2 with respect to any domestic constituent limited partnerships, the merger proceedings may be in accordance with the laws of the state or place of incorporation or organization of the surviving party.

(3) If the surviving party is a domestic corporation or domestic other business entity, the certificate of merger or the agreement of merger with attachments shall be filed as provided in subdivision (g) and thereupon, subject to subdivision (c) of Section 110 or paragraph (2) of subdivision (g), as is applicable, the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity.

(4) If the surviving party is a foreign corporation or foreign other business entity, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving party is organized, but, except as provided in paragraph (5), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of paragraph (1) of subdivision (g). If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which that domestic other business entity is organized, including subdivision (a) of Section 15678.4, subdivision (b) of Section 16915, or subdivision (a) of Section 17552, as is applicable, shall also be filed at the same time as the filing of the agreement of merger.

(5) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(6) In a merger described in paragraph (3) or (4), each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to this subdivision surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this



state, the filing of the agreement of merger or certificate of merger, as is applicable, pursuant to this subdivision automatically has the effect of a cancellation of registration for that foreign other business entity as of the date of filing in this state or, if later, the effective date of the merger, without the necessity of the filing of a certificate of cancellation.

(7) A certificate of satisfaction of the Franchise Tax Board for each disappearing party to the merger shall be filed when required by subdivision (g) or when required by Section 23334 of the Revenue and Taxation Code.

SEC. 11. Section 1200 of the Corporations Code is amended to read:

1200. A reorganization (Section 181) or a share exchange tender offer (Section 183.5) shall be approved by the board of:

- (a) Each constituent corporation in a merger reorganization;
- (b) The acquiring corporation in an exchange reorganization;
- (c) The acquiring corporation and the corporation whose property and assets are acquired in a sale-of-assets reorganization;
- (d) The acquiring corporation in a share exchange tender offer (Section 183.5); and
- (e) The corporation in control of any constituent or acquiring domestic or foreign corporation or other business entity under subdivision (a), (b) or (c) and whose equity securities are issued, transferred, or exchanged in the reorganization (a “parent party”).

SEC. 12. Section 1201 of the Corporations Code is amended to read:

1201. (a) The principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of each class of each corporation the approval of whose board is required under Section 1200, except as provided in subdivision (b) and except that (unless otherwise provided in the articles) no approval of any class of outstanding preferred shares of the surviving or acquiring corporation or parent party shall be required if the rights, preferences, privileges and restrictions granted to or imposed upon that class of shares remain unchanged (subject to the provisions of subdivision (c)). For the purpose of this subdivision, two classes of common shares differing only as to voting rights shall be considered as a single class of shares.

(b) No approval of the outstanding shares (Section 152) is required by subdivision (a) in the case of any corporation if that corporation, or its shareholders immediately before the reorganization, or both, shall own (immediately after the reorganization) equity securities, other than any warrant or right to subscribe to or purchase those equity securities, of the surviving or acquiring corporation or a parent party (subdivision (d) of Section 1200) possessing more than five-sixths of the voting power of the surviving or acquiring corporation or parent party. In making the

determination of ownership by the shareholders of a corporation, immediately after the reorganization, of equity securities pursuant to the preceding sentence, equity securities which they owned immediately before the reorganization as shareholders of another party to the transaction shall be disregarded. For the purpose of this section only, the voting power of a corporation shall be calculated by assuming the conversion of all equity securities convertible (immediately or at some future time) into shares entitled to vote but not assuming the exercise of any warrant or right to subscribe to or purchase those shares.

(c) Notwithstanding subdivision (b), the principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of the surviving corporation in a merger reorganization if any amendment is made to its articles which would otherwise require that approval.

(d) Notwithstanding subdivision (b), the principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of any class of a corporation which is a party to a merger or sale-of-assets reorganization if holders of shares of that class receive shares of the surviving or acquiring corporation or parent party having different rights, preferences, privileges or restrictions than those surrendered. Shares in a foreign corporation received in exchange for shares in a domestic corporation have different rights, preferences, privileges and restrictions within the meaning of the preceding sentence.

(e) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by the affirmative vote of at least two-thirds of each class of the outstanding shares of any close corporation if the reorganization would result in their receiving shares of a corporation which is not a close corporation. However, the articles may provide for a lesser vote, but not less than a majority of the outstanding shares of each class.

(f) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of any class of a corporation which is a party to a merger reorganization if holders of shares of that class receive interests of a surviving other business entity in the merger.

(g) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by all shareholders of any class or series if, as a result of the reorganization, the holders of that class or series become personally liable for any obligations of a party to the reorganization, unless all holders of that class or series have the dissenters' rights provided in Chapter 13 (commencing with Section 1300).

(h) Any approval required by this section may be given before or after the approval by the board. Notwithstanding approval required by this section, the board may abandon the proposed reorganization



without further action by the shareholders, subject to the contractual rights, if any, of third parties.

SEC. 12.5. Section 5063.5 is added to the Corporations Code, to read:

5063.5. “Other business entity” means a domestic or foreign limited liability company, limited partnership, general partnership, business trust, real estate investment trust, unincorporated association (other than a nonprofit association), or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance as set forth in Article 16 (commencing with Section 1550) of Chapter 3 of Part 2 of Division 1 of the Insurance Code. As used herein, “general partnership” means a “partnership” as defined in subdivision (7) of Section 16101; “business trust” means a business organization formed as a trust; “real estate investment trust” means a “real estate investment trust” as defined in subsection (a) of Section 856 of the Internal Revenue Code of 1986, as amended; and “unincorporated association” has the meaning set forth in Section 24000.

SEC. 12.7. Section 5064.5 is added to the Corporations Code, to read:

5064.5. “Parent party” means the corporation in control of any constituent domestic or foreign corporation or other business entity and whose equity securities are issued, transferred, or exchanged in a merger pursuant to Section 6019.1 or 8019.1.

SEC. 13. Section 6010 of the Corporations Code is amended to read:

6010. (a) A public benefit corporation may merge with any domestic corporation, foreign corporation (Section 171), or other business entity (Section 5063.5). However, without the prior written consent of the Attorney General, a public benefit corporation may only merge with another public benefit corporation or a religious corporation or a foreign nonprofit corporation the articles of which provide that its assets are irrevocably dedicated to charitable, religious, or public purposes.

(b) At least 20 days prior to consummation of any merger allowed by subdivision (a), the Attorney General must be provided with a copy of the proposed agreement of merger.

(c) Without the prior written consent of the Attorney General, when a merger occurs pursuant to subdivision (a), each member of a constituent corporation may only receive or keep a membership in the surviving corporation for or as a result of the member’s membership in the constituent corporation.

SEC. 14. Section 6019.1 is added to the Corporations Code, to read:

6019.1. (a) Subject to the provisions of Sections 6010 and 9640, any one or more corporations may merge with one or more other business entities (Section 5063.5). One or more other domestic

corporations and foreign corporations (Section 5053) may be parties to the merger. Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve an agreement of merger. The board and the members (Section 5034) of each corporation which desires to merge, and each other person or persons, if any, whose approval of an amendment of the articles of that corporation is required by the articles or bylaws shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each other party by those persons authorized or required to approve the merger by the laws under which it is organized. The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 5064.5), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 5810 and 5816, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivision (b) of Section 5122 and subdivision (b) of Section 9122, the same as, or similar to, the name of a disappearing party to the merger.

(4) The manner, if any, of converting the memberships of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party; and, if any memberships of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, the cash, rights, securities, or other property which the holders of those memberships are to receive in exchange for the memberships, which cash, rights, securities, or other property may be in addition to, or in lieu of, shares, memberships, interests, or other securities of the surviving corporation or surviving other business entity.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of



Section 15678.2, or, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.

(6) Any other details or provisions as are desired.

(c) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger if the amendment is approved by each constituent corporation in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, as so amended it shall then constitute the agreement of merger.

(d) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the members (Section 5034) or other persons, at any time before the merger is effective.

(e) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president or a vice president, and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(f) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class, if any, entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class entitled to vote, if any, which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and, if applicable, by that other person or persons whose approval is required.

If equity securities of a parent party (Section 5064.5) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (h). The agreement of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger taxed under the Bank and Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the



Franchise Tax Board that all taxes imposed by that law have been paid or secured. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and also by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed such officers, by the chairperson of the board, president, or vice president, and also by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for such party the provision of law or other basis for the authority of the signing persons.

The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of a constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger or its principal terms, as required, were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of



merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger.

The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(g) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(h) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (f) and this subdivision.

(2) Subject to subdivision (c) of Section 5008 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (f).

(3) If the surviving party is a foreign corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (f).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4, subdivision (b) of Section 16915, or subdivision (a) of Section 17552, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing

corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (f) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (f) automatically has the effect of a cancellation of registration for that foreign other business entity as of the date of filing in this state or, if later, the effective date of the merger, without the necessity of the filing of a certificate of cancellation.

SEC. 15. Section 6020 of the Corporations Code is amended to read:

6020. (a) Upon merger pursuant to this chapter the separate existences of the disappearing parties to the merger cease and the surviving party to the merger shall succeed, without other transfer, to all the rights and property of each of the disappearing parties to the merger and shall be subject to all the debts and liabilities of each and trust obligations upon the property of a disappearing party in the same manner as if incurred by the surviving party to the merger.

(b) All rights of creditors and all liens and trusts upon or arising from the property of each of the constituent corporations and other parties to the merger shall be preserved unimpaired, provided that the liens and trust obligations upon property of a disappearing party shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(c) Any action or proceeding pending by or against any disappearing corporation or other party to the merger may be prosecuted to judgment, which shall bind the surviving party to the merger, or the surviving party to the merger may be proceeded against or substituted in its place.

SEC. 16. Section 6021 of the Corporations Code is amended to read:

6021. Whenever a domestic or foreign corporation or other business entity (Section 5063.5) having any real property in this state merges with another domestic or foreign corporation or other business entity pursuant to the laws of this state or of the state or place in which any constituent party to the merger was organized, and the laws of the state or place of organization (including this state) of any disappearing party to the merger provide substantially that the making and filing of the agreement of merger vests in the surviving party to the merger all the real property of any disappearing party to the merger, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the



disappearing party to the merger is located of either (a) a certificate prescribed by the Secretary of State, or (b) a copy of the agreement of merger or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected, shall evidence record ownership in the surviving party to the merger of all interest of that disappearing party to the merger in and to the real property located in that county.

SEC. 17. Section 6022 of the Corporations Code is amended to read:

6022. Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, which is made to a constituent corporation and which takes effect or remains payable after the merger, inures to the surviving party to the merger.

SEC. 18. Section 8010 of the Corporations Code is amended to read:

8010. A mutual benefit corporation may merge with any domestic corporation, foreign corporation, foreign business corporation, or other business entity (Section 5063.5). However, a merger with a public benefit corporation or a religious corporation must have the prior written consent of the Attorney General.

SEC. 19. Section 8019.1 is added to the Corporations Code, to read:

8019.1. (a) Subject to the provisions of Section 8010, any one or more corporations may merge with one or more other business entities (Section 5063.5). One or more other domestic corporations, foreign corporations (Sections 5053), and foreign business corporations (Section 5052) may be parties to the merger. Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation or foreign business corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve an agreement of merger. The board and the members (Section 5034) of each corporation which desires to merge, and each other person or persons, if any, whose approval of an amendment of the articles of that corporation is required by the articles or bylaws shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each other constituent party by those



persons authorized or required to approve the merger by the laws under which it is organized. The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 5064.5), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

- (1) The terms and conditions of the merger.
 - (2) The name and place of incorporation or organization of each party and the identity of the surviving party.
 - (3) The amendments, if any, subject to Sections 7810 and 7816, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivisions (b) and (c) of Section 7122, the same as or similar to the name of a disappearing party to the merger.
 - (4) The manner, if any, of converting the memberships or securities of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party; and, if any memberships or securities of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, cash, rights, securities, or other property which the holders of those memberships or securities are to receive in exchange for the memberships or securities, which cash, rights, securities, or other property may be in addition to or in lieu of shares, memberships, interests, or other securities of the surviving party.
 - (5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2, or, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.
 - (6) Any other details or provisions as are desired.
- (c) Each membership of the same class of any constituent corporation (other than the cancellation of memberships held by a party to the merger or its parent or a wholly owned subsidiary of either in another constituent corporation) shall be treated equally with respect to any distribution of cash, property, rights, or securities unless (i) all members of the class consent or (ii) the commissioner has approved the terms and conditions of the transaction and the fairness of those terms pursuant to Section 25142.
- (d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger if the amendment is approved by each constituent corporation in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, as so amended it shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the members (Section 5034) or other persons, at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president, or a vice president and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic corporation, foreign corporation, and foreign business corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote required of each class, and, if applicable, by such other person or persons whose approval is required.

If equity securities of a parent party (Section 5064.5) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (i). The agreement of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger taxed under the Bank and Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by that law have been paid or secured. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in its articles of

organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed such officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for such party the provision of law or other basis for the authority of the signing persons.

The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of a constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915 and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger.

The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(h) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to



the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and of the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(i) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (g) and this subdivision.

(2) Subject to subdivision (c) of Section 5008 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (g).

(3) If the surviving party is a foreign corporation or foreign business corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation or foreign business corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (g).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4, subdivision (b) of Section 16915, or subdivision (a) of Section 17522, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (g) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (g) automatically has the effect of a cancellation of registration for that foreign other business entity as of the date of



filing in this state or, if later, the effective date of the merger, without the necessity of the filing of a certificate of cancellation.

SEC. 20. Section 8020 of the Corporations Code is amended to read:

8020. (a) Upon merger pursuant to this chapter the separate existences of the disappearing parties to the merger cease and the surviving party to the merger shall succeed, without other transfer, to all the rights and property of each of the disappearing parties to the merger and shall be subject to all the debts and liabilities of each and trust obligations upon the property of a disappearing party in the same manner as if incurred by the surviving party to the merger.

(b) All rights of creditors and all liens and trusts upon or arising from the property of each of the constituent corporations and other parties to the merger shall be preserved unimpaired, provided that the liens and trust obligations upon property of a disappearing party shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(c) Any action or proceeding pending by or against any disappearing corporation or other party to the merger may be prosecuted to judgment, which shall bind the surviving party to the merger, or the surviving party to the merger may be proceeded against or substituted in its place.

SEC. 21. Section 8021 of the Corporations Code is amended to read:

8021. Whenever a domestic or foreign or foreign business corporation or other business entity (Section 5063.5) having any real property in this state merges with another domestic or foreign or foreign business corporation or other business entity pursuant to the laws of this state or of the state or place in which any constituent party to the merger was organized, and the laws of the state or place of organization (including this state) of any disappearing party to the merger provide substantially that the making and filing of the agreement of merger vests in the surviving party to the merger all the real property of any disappearing party to the merger, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the disappearing party to the merger is located of either (a) a certificate prescribed by the Secretary of State, or (b) a copy of the agreement of merger or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected, shall evidence record ownership in the surviving party to the merger of all interest of such disappearing party to the merger in and to the real property located in that county.

SEC. 22. Section 8022 of the Corporations Code is amended to read:

8022. Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance,

which is made to a constituent corporation and which takes effect or remains payable after the merger, inures to the surviving party to the merger.

SEC. 23. Section 9640 of the Corporations Code is amended to read:

9640. (a) The provisions of Chapter 10 (commencing with Section 6010) of Part 2 apply to religious corporations except subdivision (a) of Section 6010 and Sections 6011 and 6012.

(b) A corporation may merge with any domestic corporation, foreign corporation, or other business entity (Section 5063.5). However, without the prior written consent of the Attorney General, a religious corporation may only merge with another religious corporation or with a public benefit corporation or a foreign nonprofit corporation the articles of which provide that its assets are irrevocably dedicated to charitable, religious or public purposes.

(c) The principal terms of the merger shall be approved by the members (Section 5034) of each class of each constituent corporation and by each other person or persons whose approval of an amendment of the articles is required by the articles or bylaws; and the approval by the members (Section 5034) or any other person or persons required by this section may be given before or after the approval by the board.

(d) The board of each corporation that desires to merge shall approve an agreement of merger. The constituent corporations shall be parties to the agreement of merger and other persons may be parties to the agreement of merger. The agreement shall state all of the following:

(1) The terms and conditions of the merger.

(2) The amendments, subject to Sections 5810 and 5816, to the articles of the surviving corporation to be effected by the merger, if any. If any amendment changes the name of the surviving corporation, the new name may be the same as or similar to the name of a disappearing corporation, subject to subdivision (b) of Section 9122.

(3) The amendments to the bylaws of the surviving corporation to be effected by the merger, if any.

(4) The name and place of incorporation of each constituent corporation and which of the constituent corporations is the surviving corporation.

(5) The manner, if any, of converting memberships of the constituent corporations into memberships of the surviving corporation.

(6) Any other details or provisions as are desired, if any.

SEC. 23.5. Section 12242.5 is added to the Corporations Code, to read:

12242.5. “Other business entity” means a domestic or foreign limited liability company, limited partnership, general partnership,

business trust, real estate investment trust, unincorporated association (other than a nonprofit association), or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance as set forth in Article 16 (commencing with Section 1550) of Chapter 3 of Part 2 of Division 1 of the Insurance Code. As used herein, “general partnership” means a “partnership” as defined in subdivision (7) of Section 16101; “business trust” means a business organization formed as a trust; “real estate investment trust” means a “real estate investment trust” as defined in subsection (a) of Section 856 of the Internal Revenue Code of 1986, as amended; and “unincorporated association” has the meaning set forth in Section 24000.

SEC. 23.7. Section 12242.6 is added to the Corporations Code, to read:

12242.6. “Parent party” means the corporation in control of any constituent domestic or foreign corporation or other business entity and whose equity securities are issued, transferred, or exchanged in a merger pursuant to Section 12540.1.

SEC. 24. Section 12530 of the Corporations Code is amended to read:

12530. Any corporation may merge with another domestic corporation, foreign corporation, or other business entity (Section 12242.5). However, a merger with a public benefit corporation or a religious corporation must have the prior written consent of the Attorney General.

SEC. 25. Section 12540.1 is added to the Corporations Code, to read:

12540.1. (a) Any one or more corporations may merge with one or more other business entities (Section 12242.5). Subject to the provisions of Section 12530, one or more other domestic corporations or foreign corporations (Section 12237) may be parties to the merger.

Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation, other domestic corporation, foreign corporation, and other business entity which desires to merge shall approve an agreement of merger. The board and the members of each corporation which desires to merge shall approve (Sections 12222 and 12224) the agreement of merger. The agreement of

merger shall be approved on behalf of each other constituent party by those persons authorized or required to approve the merger by the laws under which it is organized.

The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 12242.6), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 12500 and 12507, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivisions (b) and (c) of Section 12302, the same as, or similar to, the name of a disappearing party to the merger.

(4) The manner, if any, of converting the memberships or securities of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party and, if any memberships or securities of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, the cash, rights, securities, or other property which the holders of those memberships or securities are to receive in exchange for the memberships or securities, which cash, rights, securities, or other property may be in addition to or in lieu of shares, memberships, interests, or other securities of the surviving party.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2, or, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.

(6) Any other details or provisions as are desired.

(c) Each membership of the same class of any constituent corporation (other than the cancellation of memberships held by a party to the merger or its parent or a wholly owned subsidiary of either in another constituent corporation) shall be treated equally with respect to any distribution of cash, property, rights, or securities unless (i) all members of the class consent or (ii) the commissioner has approved the terms and conditions of the transaction and the fairness of those terms pursuant to Section 25142.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger if the amendment is approved by each constituent corporation in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the

other parties to the agreement of merger, as so amended it shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the members (Section 12224), at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president, or a vice president and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and, if applicable, by that other person or persons whose approval is required.

If equity securities of a parent party (Section 12242.6) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (i). The agreement of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger taxed under the Bank and Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by that law have been paid or secured. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited



liability company by all of the managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent general partnership or foreign constituent limited liability company by one or more managers and by each foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed such officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for such party the provision of law or other basis for the authority of the signing persons.

The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger or its principal terms, as required, were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger.

The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(h) a copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent



to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and of the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(i) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (g) and this subdivision.

(2) Subject to subdivision (c) of Section 12214 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (g).

(3) If the surviving party is a foreign corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (g).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4, subdivision (b) of Section 16915 or subdivision (a) of Section 17552, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (g) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (g) automatically has the effect of a cancellation of



registration for that foreign other business entity without the necessity of the filing of a certificate of cancellation.

SEC. 25.2. Section 12550 of the Corporations Code is amended to read:

12550. (a) Upon merger pursuant to this chapter the separate existences of the disappearing parties to the merger cease and the surviving party to the merger shall succeed, without other transfer, to all the rights and property of each of the disappearing parties to the merger and shall be subject to all the debts and liabilities of each and trust obligations upon the property of a disappearing party in the same manner as if incurred by the surviving party to the merger.

(b) All rights of creditors and all liens and trusts upon or arising from the property of each of the constituent corporations and other parties to the merger shall be preserved unimpaired, provided that these liens and trust obligations upon property of a disappearing party shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(c) Any action or proceeding pending by or against any disappearing corporation or other party to the merger may be prosecuted to judgment, which shall bind the surviving party to the merger, or the surviving party to the merger may be proceeded against or substituted in its place.

SEC. 25.4. Section 12551 of the Corporations Code is amended to read:

12551. Whenever a domestic or foreign corporation or other business entity (Section 12242.5) having any real property in this state merges with another domestic or foreign corporation or other business entity pursuant to the laws of this state or of the state or place in which any constituent party to the merger was organized, and the laws of the state or place of organization (including this state) of any disappearing party to the merger provide substantially that the making and filing of the agreement of merger vests in the surviving party to the merger all the real property of any disappearing party to the merger, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the disappearing party to the merger is located of either (a) a certificate prescribed by the Secretary of State, or (b) a copy of the agreement of merger or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected, shall evidence record ownership in the surviving party to the merger of all interest of the disappearing party to the merger in and to the real property located in that county.

SEC. 25.6. Section 12552 of the Corporations Code is amended to read:

12552. Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance,



which is made to a constituent corporation and which takes effect or remains payable after the merger, inures to the surviving party to the merger.

SEC. 26. Section 15679.1 of the Corporations Code is amended to read:

15679.1. (a) For purposes of this article, “reorganization” refers to any of the following:

(1) A merger pursuant to Article 7.5 (commencing with Section 15678.1).

(2) The acquisition by one limited partnership in exchange, in whole or in part, for its partnership interests (or the partnership interests or equity securities of a partnership or other business entity that is in control of the acquiring limited partnership) of partnership interests or equity securities of another limited partnership or other business entity if, immediately after the acquisition, the acquiring limited partnership has control of the other limited partnership or other business entity.

(3) The acquisition by one limited partnership in exchange, in whole or in part, for its partnership interests (or the partnership interests or equity securities of a partnership or other business entity which is in control of the acquiring limited partnership) or for its debt securities (or debt securities of a limited partnership or other business entity which is in control of the acquiring limited partnership) which are not adequately secured and which have a maturity date in excess of five years after the consummation of the acquisition, or both, of all or substantially all of the assets of another limited partnership or other business entity.

(b) For purposes of this article, “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a limited partnership or other business entity.

SEC. 26.5. Section 15679.1 of the Corporations Code is amended to read:

15679.1. (a) For purposes of this article, “reorganization” refers to any of the following:

(1) A conversion pursuant to Article 7.4 (commencing with Section 15677.1).

(2) A merger pursuant to Article 7.5 (commencing with Section 15678.1).

(3) The acquisition by one limited partnership in exchange, in whole or in part, for its partnership interests (or the partnership interests or equity securities of a partnership or other business entity that is in control of the acquiring limited partnership) of partnership interests or equity securities of another limited partnership or other business entity if, immediately after the acquisition, the acquiring limited partnership has control of the other limited partnership or other business entity.



(4) The acquisition by one limited partnership in exchange in whole or in part for its partnership interests (or the partnership interests or equity securities of a partnership or other business entity which is in control of the acquiring limited partnership) or for its debts securities (or debt securities of a limited partnership or other business entity which is in control of the acquiring limited partnership) which are not adequately secured and which have a maturity date in excess of five years after the consummation of the acquisition, or both, of all or substantially all of the assets of another limited partnership or other business entity.

(b) For purposes of this article, “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a limited partnership or other business entity.

SEC. 27. Section 16901 of the Corporations Code is amended to read:

16901. In this article, the following terms have the following meanings:

(1) “Constituent other business entity” means any other business entity that is merged with or into one or more partnerships and includes a surviving other business entity.

(2) “Constituent partnership” means a partnership that is merged with or into one or more other partnerships or other business entities and includes a surviving partnership.

(3) “Disappearing other business entity” means a constituent other business entity that is not the surviving other business entity.

(4) “Disappearing partnership” means a constituent partnership that is not the surviving partnership.

(5) “Domestic” means organized under the laws of this state when used in relation to any partnership, other business entity, or person (other than an individual).

(6) “Foreign other business entity” means any other business entity formed under the laws of any state other than this state or under the laws of the United States or of a foreign country.

(7) “Foreign partnership” means a partnership formed under the laws of any state other than this state or under the laws of a foreign country.

(8) “General partner” means a partner in a partnership and a general partner in a limited partnership.

(9) “Limited liability company” means a limited liability company created under Title 2.5 (commencing with Section 17000), or comparable law of another jurisdiction.

(10) “Limited partner” means a limited partner in a limited partnership.

(11) “Limited partnership” means a limited partnership created under Chapter 3 (commencing with Section 15611), predecessor law, or comparable law of another jurisdiction.



(12) “Other business entity” means a limited partnership, limited liability company, corporation, business trust, real estate investment trust, or an unincorporated association (other than a nonprofit association), but excluding a partnership.

(13) “Partner” includes both a general partner and a limited partner.

(14) “Surviving other business entity” means an other business entity into which one or more partnerships are merged.

(15) “Surviving partnership” means a partnership into which one or more other partnerships or other business entities are merged.

SEC. 28. Section 16911 of the Corporations Code is amended to read:

16911. (a) Each partnership and other business entity which desires to merge shall approve an agreement of merger. The agreement of merger shall be approved by the number or percentage of partners specified for merger in the partnership agreement of the constituent partnership. If the partnership agreement fails to specify the required partner approval for merger of the constituent partnership, then the agreement of merger shall be approved by that number or percentage of partners specified by the partnership agreement to approve an amendment to the partnership agreement. However, if the merger effects a change for which the partnership agreement requires a greater number or percentage of partners than that required to amend the partnership agreement, then the merger shall be approved by that greater number or percentage. If the partnership agreement contains no provision specifying the vote required to amend the partnership agreement, then the agreement of merger must be approved by all the partners. The agreement of merger shall be approved on behalf of each constituent other business entity by those persons required to approve the merger by the laws under which it is organized. Other persons may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of organization of the surviving partnership or surviving other business entity, and of each disappearing partnership and disappearing other business entity, and the agreement of merger may change the name of the surviving partnership, which new name may be the same as, or similar to, the name of a disappearing partnership.

(3) The manner of converting the partnership interests of each of the constituent partnerships into interests or other securities of the surviving partnership or surviving other business entity, and if partnership interests of any of the constituent partnerships are not to be converted solely into interest or other securities of the surviving partnership or surviving other business entity, the cash, property, rights, interests, or securities which the holders of the partnership

interest are to receive in exchange for the partnership interests, which cash, property, rights, interests, or securities may be in addition to or in lieu of interests or other securities of the surviving partnership or surviving other business entity, or that the partnership interests are canceled without consideration.

(4) Any other details or provisions as are required by the laws under which any constituent other business entity is organized.

(5) Any other details or provisions that are desired, including, without limitation, a provision for the treatment of fractional partnership interests.

(b) If the partnership is merging into a limited partnership, then in addition to the approval of the partners as set forth under subdivision (a), the agreement of merger must be approved by all partners who will become general partners of the surviving limited partnership upon the effectiveness of the merger.

(c) Notwithstanding its prior approval, an agreement of merger may be amended before the merger takes effect if the amendment is approved by the partners of each constituent partnership, in the same manner as required for approval of the original agreement of merger, and by each of the constituent other business entities.

(d) The partners of a constituent partnership may in their discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other constituent partnerships and constituent other business entities, if the abandonment is approved by the partners of the constituent partnership in the same manner as required for approval of the original agreement of merger.

(e) An agreement of merger approved in accordance with subdivision (a) may (1) effect any amendment to the partnership agreement of any domestic constituent partnership or (2) effect the adoption of a new partnership agreement for a domestic constituent partnership if it is the surviving partnership in the merger. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger.

(f) The surviving partnership or surviving other business entity shall keep the agreement of merger at the principal place of business of the surviving entity if the surviving entity is a partnership or a foreign other business entity, at the office referred to in Section 1500 if the surviving entity is a domestic corporation, at the office referred to in subdivision (a) of Section 15614 if the surviving entity is a domestic limited partnership or at the office referred to in Section 17057 if the surviving entity is a domestic limited liability company and, upon the request of a partner of a constituent partnership or a holder of interests or other securities of a constituent other business entity, the authorized person on behalf of the partnership or the surviving other business entity shall promptly deliver to the partner or the holder of interests or other securities, at the expense of the



surviving partnership or surviving other business entity, a copy of the agreement of merger. A waiver by a partner or holder of interests or other securities of the rights provided in this subdivision shall be unenforceable.

SEC. 29. Section 16914 of the Corporations Code is amended to read:

16914. (a) When a merger takes effect, all of the following apply:

(1) The separate existence of the disappearing partnerships and disappearing other business entities ceases and the surviving partnership or surviving other business entity shall succeed, without other transfer, act or deed, to all the rights and property whether real, personal, or mixed, of each of the disappearing partnerships and disappearing other business entities and shall be subject to all the debts and liabilities of each in the same manner as if the surviving partnership or surviving other business entity had itself incurred them.

(2) All rights of creditors and all liens upon the property of each of the constituent partnerships and constituent other business entities shall be preserved unimpaired and may be enforced against the surviving partnership or the surviving other business entity to the same extent as if the debt, liability or duty that gave rise to that lien had been incurred or contracted by it, provided that those liens upon the property of a disappearing partnership or disappearing other business entity shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(3) Any action or proceeding pending by or against any disappearing partnership or disappearing other business entity may be prosecuted to judgment, which shall bind the surviving partnership or surviving other business entity, or the surviving partnership or surviving other business entity may be proceeded against or be substituted in the disappearing partnership's or the disappearing other business entity's place.

(b) (1) Unless a certificate of merger has been filed to effect the merger, the surviving entity shall promptly notify the Secretary of State of the mailing address of its agent for service of process, its chief executive office, and of any change of address. To enforce an obligation of a limited partnership that has merged with a foreign entity, the Secretary of State shall only be the agent for service of process in an action or proceeding against the surviving foreign other business entity, if the agent designated for the service of process for the entity is a natural person and cannot be found with due diligence or if the agent is a corporation and no person, to whom delivery may be made, can be found with due diligence, or if no agent has been designated and if no one of the officers, partners, managers, members, or agents of the entity can be found after diligent search, and it is so shown by affidavit to the satisfaction of the court. The court then may make an order that service be made by personal delivery



to the Secretary of State or to an assistant or deputy Secretary of State of two copies of the process together with two copies of the order, and the order shall set forth an address to which the process shall be sent by the Secretary of State. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.

(2) Upon receipt of the process and order and the fee set forth in Section 12206 of the Government Code, the Secretary of State shall give notice to the entity of the service of the process by forwarding by certified mail, return receipt requested, a copy of the process and order to the address specified in the order.

(3) The Secretary of State shall keep a record of all process served upon the Secretary of State and shall record therein the time of service and the Secretary of State's action with respect thereto. The certificate of the Secretary of State, under the Secretary of State's official seal, certifying to the receipt of process, the giving of notice thereof to the entity, and the forwarding of the process, shall be competent and prima facie evidence of the matters stated therein.

(c) A partner of the surviving partnership or surviving limited partnership, a member of the surviving limited liability company, a shareholder of the surviving corporation, or a holder of equity securities of the surviving other business entity, is liable for all of the following:

(1) All obligations of a party to the merger for which that person was personally liable before the merger.

(2) All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity.

(3) All obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if that person is a limited partner, a shareholder in a corporation, or, unless expressly provided otherwise in the articles of organization or other constituent documents, a member of a limited liability company or a holder of equity securities in a surviving other business entity.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or surviving other business entity, the general partners of that party immediately before the effective date of the merger, to the extent that party was a partnership or a limited partnership, shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in Section 16807 or in the limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

(e) A partner of a domestic disappearing partnership, who does not vote in favor of the merger and does not agree to become a partner, member, shareholder, or holder of interest or equity securities of the surviving partnership or surviving other business

entity shall have the right to dissociate from the partnership, as of the date the merger takes effect. Within 10 days after the approval of the merger by the partners as required under this article, each domestic disappearing partnership shall send notice of the approval of the merger to each partner that has not approved the merger, accompanied by a copy of Section 16701 and a brief description of the procedure to be followed under that section if the partner wishes to dissociate from the partnership. A partner that desires to dissociate from a disappearing partnership shall send written notice of that dissociation within 30 days after the date of the notice of the approval of the merger. The disappearing partnership shall cause the partner's interest in the entity to be purchased under Section 16701. The surviving entity is bound under Section 16702 by an act of a general partner dissociated under this subdivision, and the partner is liable under Section 16703 for transactions entered into by the surviving entity after the merger takes effect. The disassociation of a partner in connection with a merger pursuant to the terms of this subdivision shall not be deemed a wrongful disassociation under Section 16602.

SEC. 30. Section 16915 of the Corporations Code is amended to read:

16915. (a) In a merger involving only partnerships, or in a merger to which a domestic partnership and an other business entity is a party but in which no other domestic other business entity is a party, the surviving partnership or surviving foreign other business entity may file with the Secretary of State a statement that one or more partnerships have merged into the surviving partnership or surviving other business entity. A statement of merger shall contain the following:

(1) The name of each partnership or other business entity that is a party to the merger.

(2) The name of the surviving entity into which the other partnerships or other business entities were merged.

(3) The street address of the surviving entity's chief executive office and of an office in this state, if any.

(4) Whether the surviving entity is a partnership or an other business entity, specifying the type of the entity.

(b) In a merger involving a domestic partnership in which a domestic other business entity is also a party, after approval of the merger by the constituent partnerships and any constituent other business entities, the constituent partnerships and constituent other business entities shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State, but if the surviving entity is a domestic corporation or a foreign corporation in a merger in which a domestic corporation is a constituent party, the surviving corporation shall file in the office of the Secretary of State a copy of the agreement of merger and attachments required under paragraph (1) of subdivision (g) of Section 1113. The certificate of



merger shall be executed and acknowledged by each domestic constituent partnership by two partners (unless a lesser number is provided in the partnership agreement) and by each foreign constituent partnership by one or more partners, and by each constituent other business entity by those persons required to execute the certificate of merger by the laws under which the constituent other business entity is organized. The certificate of merger shall set forth all of the following:

(1) The names and the Secretary of State's file numbers, if any, of each of the constituent partnerships and constituent other business entities, separately identifying the disappearing partnerships and disappearing other business entities and the surviving partnership or surviving other business entity.

(2) If a vote of the partners was required under Section 16911, a statement that the principal terms of the agreement of merger were approved by a vote of the partners, which equaled or exceeded the vote required.

(3) If the surviving entity is a domestic partnership and not an other business entity, any change to the information set forth in any filed statement of partnership authority of the surviving partnership resulting from the merger, including any change in the name of the surviving partnership resulting from the merger. The filing of a certificate of merger setting forth any changes to any filed statement of partnership authority of the surviving partnership shall have the effect of the filing of a certificate of amendment of the statement of partnership authority by the surviving partnership, and the surviving partnership need not file a certificate of amendment under Section 16015 to reflect those changes.

(4) The future effective date or time (which shall be a date or time certain not more than 90 days subsequent to the date of filing) of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(5) If the surviving entity is an other business entity or a foreign partnership, the full name, type of entity, legal jurisdiction in which the entity was organized and by whose laws its internal affairs are governed, and the address of the principal place of business of the entity.

(6) Any other information required to be stated in the certificate of merger by the laws under which each constituent other business entity is organized.

(c) A statement of merger or a certificate of merger, as is applicable under subdivision (a) or (b), shall have the effect of the filing of a cancellation for each disappearing partnership of any statement of partnership authority filed by it.

SEC. 31. Section 16916 of the Corporations Code is amended to read:



16916. (a) Whenever a domestic or foreign partnership or other business entity having any real property in this state merges with another partnership or other business entity pursuant to the laws of this state or of the state or place in which any constituent partnership or constituent other business entity was organized, and the laws of the state or place of organization (including this state) of any disappearing partnership or disappearing other business entity provide substantially that the making and filing of a statement of merger, agreement of merger or certificate of merger vests in the surviving partnership or surviving other business entity all the real property of any disappearing partnership and disappearing other business entity, the filing for record in the office of the county record of any county in this state in which any of the real property of the disappearing partnership or disappearing other business entity is located of either (1) a certificate of merger or agreement of merger certified by the Secretary of State, or other certificate prescribed by the Secretary of State, or (2) a copy of the statement of merger, agreement of merger or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected, shall evidence record ownership in the surviving partnership or surviving other business entity of all interest of that disappearing partnership or disappearing other business entity in and to the real property located in that county.

(b) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to subdivision (c) of Section 16105, stating the name of a partnership or other business entity that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by Section 16915, operates with respect to the partnerships or other business entities named to the extent provided in subdivision (a).

(c) Recording of the certificate of merger in accordance with subdivision (a) shall create, in favor of bona fide purchasers or encumbrancers for value, a conclusive presumption that the merger was validly completed.

SEC. 32. Section 17600 of the Corporations Code is amended to read:

17600. (a) For purposes of this chapter, “reorganization” refers to any of the following:

(1) A merger pursuant to Chapter 12 (commencing with Section 17550).

(2) The acquisition by one limited liability company, in exchange, in whole or in part, for its membership interests (or the membership interests or equity securities of a limited liability company or other business entity that is in control of the acquiring limited liability company), of membership interests or equity securities of another

limited liability company or other business entity if, immediately after the acquisition, the acquiring limited liability company has control of the other limited liability company or other business entity.

(3) The acquisition by one limited liability company in exchange in whole or in part for its membership interests (or the membership interests or equity securities of a limited liability company or other business entity that is in control of the acquiring limited liability company) or for its debt securities (or debt securities of a limited liability company or other business entity that is in control of the acquiring limited liability company) that are not adequately secured and that have a maturity date in excess of five years after the consummation of the acquisition, or both, of all or substantially all of the assets of another limited liability company or other business entity.

(b) For purposes of this chapter, “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a limited liability company or other business entity.

SEC. 32.5. Section 17600 of the Corporations Code is amended to read:

17600. (a) For purposes of this chapter, “reorganization” refers to any of the following:

(1) A conversion pursuant to Chapter 11.5 (commencing with Section 17540.1).

(2) A merger pursuant to Chapter 12 (commencing with Section 17550).

(3) The acquisition by one limited liability company in exchange, in whole or in part, for its membership interests (or the membership interests or equity securities of a limited liability company or other business entity that is in control of the acquiring limited liability company), of membership interests or equity securities of another limited liability company or other business entity if, immediately after the acquisition, the acquiring limited liability company has control of the other limited liability company or other business entity.

(4) The acquisition by one limited liability company in exchange in whole or in part for its membership interests (or the membership interests or equity securities of a limited liability company or other business entity that is in control of the acquiring limited liability company) or for its debt securities (or debt securities of a limited liability company or other business entity that is in control of the acquiring limited liability company) that are not adequately secured and that have a maturity date in excess of five years after the consummation of the acquisition, or both, of all or substantially all of the assets of another limited liability company or other business entity.

(b) For purposes of this chapter, “control” means the possession, direct or indirect, of the power to direct or cause the direction of the



management and policies of a limited liability company or other business entity.

SEC. 33. Section 26.5 of this bill incorporates amendments to Section 15679.1 of the Corporations Code proposed by both this bill and AB 197. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 15679.1 of the Corporations Code, and (3) this bill is enacted after AB 197, in which case Section 26 of this bill shall not become operative.

SEC. 34. Section 32.5 of this bill incorporates amendments to Section 17600 of the Corporations Code proposed by both this bill and AB 197. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 17600 of the Corporations Code, and (3) this bill is enacted after AB 197, in which case Section 32 of this bill shall not become operative.

